

Remarks

In Response to the Official Action of August 5, 2008, Applicants submit the following remarks. Applicants believe that the entry of this Response is proper as it makes no amendments to the claims.

Applicants appreciate the Examiner's withdrawal of the previous rejections.

The Office Action has issued new rejections, rejecting the claims under 35 U.S.C. §103 as obvious over Chen, U.S. Patent No. 6,702,736, at the time of the invention in view of Hale, U.S. Patent Application No. 2003/0114730, and in further view of Fukunaga, U.S. Patent No. 6,346,940. This rejection is respectfully traversed for the reason set forth below.

Applicants respectfully submit that the present rejection is improper because the newly cited reference—Hale, U.S. Patent Application No. 2003/0114730—is not prior art.

Applicants note that Hale is not a prior art publication under 35 U.S.C. §102(a) for each of the following reasons: (a) because it is not “by others”, but rather, is by the same inventive entity as the present application. MPEP § 2132; *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982); (b) the present application claims priority to a

provisional application filed Sept. 5, 2002, before the publication date of Hale (June 19, 2003).

Applicants also note that Hale is not a prior art publication under 35 U.S.C. §102(b) because it was published less than a year (June 19, 2003) before the filing date of the present application (Sept. 9, 2003).

Finally, Applicants note that Hale is not a prior art patent under 35 U.S.C. §102(e) because it is not “by another”, but rather, is by the same inventive entity as the present application. MPEP § 2136.04.

If the Examiner has any further concerns in this regard, Applicant respectfully requests that the Examiner please telephone the undersigned to discuss same.

For the foregoing reasons, it is respectfully submitted that claims 14-19 and 21-28, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,

/Wesley W. Whitmyer, Jr./

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Wesley W. Whitmyer, Jr., Registration No. 33,558
David W. Aldrich, Registration No. 51,159
Attorneys for Applicants
ST.ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619
Tel. 203 324-6155